IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 436 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

NILESH ALIAS NILU JAYANTILAL MODI

Versus

THE COMMISSIONER OF POLICE CITY SURAT

Appearance:

1. Special Civil Application No. 436 of 2002

MR ANIL S DAVE for Petitioner No. 1

MR SAMEER DAVE AGP for Respondent No. 1-3

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 21/03/2002

ORAL JUDGEMENT

The present petition has been filed by the petitioner - detenu challenging the detention order passed by the detaining authority. The detenu has been detained under the provisions of Gujarat Prevention of

Anti-Social Activities Act, 1985 (hereinafter referred to as `the Act of 1985') by order dated 12/12/2001 passed by the Police Commissioner, Surat City and he has been declared as bootlegger.

2. It is now well settled that unless the activities of a person as bootlegger has disturbed the maintenance of public order, he cannot be detained under the Act. Reliance is placed on a decision in the case of Piyush Kantilal Mehta Vs. Commissioner of Police, Ahmedabad & Ors. reported in AIR 1989 SC 491.

3. I have heard learned advocate for the petitioner and also perused the material on record. According to learned advocate for the petitioner, the detaining authority has passed the detention order relying upon the solitary offence registered before the D.C.B. Police Station, Surat vide CR No.III-5676 of 2001 for the offences punishable under Sections 66(1)(B), 65(E), 65(A), 81 and 116(B) of Prohibition Act on 30/9/2001 and has also relied upon statement of witnesses. The detaining authority has passed the detention order on 12/12/2001. Thus, there is a delay of more than 2 months in passing the detention order. No affidavit explaining the delay has been filed either by the detaining authority or by the State. Learned AGP has fairly admitted the same. The learned advocate for the petitioner has relied upon a judgment delivered by this Court reported in 1997(1) G.L.H. page 381 in the case of Elesh Nandubhai Patel Vs. Commissioner of Police, Ahmedabad City and Ors. more particularly at para 21 which reads as under:

> "There appears to be some substance in the contention of the petitioner that these two unregistered cases have been referred only with a view to cover up the gap or to give life to a stale case. This unexplained delay makes a ground of detention not proximate, vitiating the order of detention itself. If I am to buttress my findings, I would say the reference may be made to the decision of the Supreme Court in Anand Prakash V. State of U.P. reported in AIR 1990 SC 516 and Pradeep Nilkanth Vs. S. Ramamurthy reported in 1993(2) Suppl. SCC 61."

4. It appears that the solitary offence is registered against the detenu on 30/9/2001 and the order of detention has been passed on 12/12/2001 and hence, there is a delay of more than two months in passing the

order of detention. No affidavit has been filed either by the detaining authority or by the State explaining the delay caused in passing the order of detention. Therefore, in view of the above judgment relied upon by the learned advocate for the petitioner, the order of detention is illegal and the same cannot be sustained. Learned advocate for the petitioner does not press any other points.

5. In view of the above, the petition is allowed. The impugned order of detention dated 12/12/2001 passed against the detenu is hereby quashed and set aside. The detenu namely Nilesh alias Nilu Jayantilal Modi is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly with no order as to costs. D.S. Permitted.

(R.P.DHOLAKIA,J.)
rafik